71 Ga. 14. See *Peck* v. *Williams*, 113 Ind. 256, 260. Such a lien is merely a remedy to prevent unjust enrichment. See *Arnold* v. *Porter*, 122 N. C. 242, 244, 29 S. E. 414, 416. No doubt the co-tenant out of possession has a personal claim against the other for his proportionate share of the proceeds. *Cutler* v. *Carrier*, 54 Me. 81. But these rents and profits spring out of the common estate, and the claim for them is so closely connected with the land that it seems more just that a preference be given as to this land over the other co-tenant's general creditors. The reasoning is analogous to that on which a vendor's lien is based. In the same way in owelty of partition by giving an equitable lien on the purport. *Baltimore & Ohio R.* v. *Trimble*, 51 Md. 99. It is submitted therefore that a lien should be given here. But as the lien is imposed only in equity, the mortgage should be preferred. *McArthur* v. *Scott*, 31 Fed. 521. One court argues that the mortgagee takes with constructive notice of the rights of the co-tenant, and so is postponed. See *McCandless' Appeal*, 98 Pa. 489, 494. But it seems unjust to charge one with notice of a lien unrecorded, the very existence of which may be impossible for the mortgagee to discover due to his inability to learn the state of accounts between the co-tenants, which may not even be known to themselves. The Missouri and Indiana courts, in saying (*Beck* v. *Kallmeyer*, *supra*, *Peck* v. *Williams*, *supra*) that each co-tenant, being seized *per my et per tout*, holds a contingent interest in the entire title which neither can encumber until their equities are adjusted, allow what is substantially a legal lien, although speaking of it as an equitable lien. This is open to the same objection of public policy against giving preference to a right of so indefinite a nature. The result of the principal case, therefore, seems correct.

TORTS — UNUSUAL CASES OF TORT LIABILITY — APPLICATION OF RULE OF FLETCHER *v.* RYLANDS TO ACTS UNDER PUBLIC FRANCHISE. — The defendant maintained high pressure water mains in the public streets under a private act of Parliament providing that nothing in the act should exempt the company from liability for any nuisance caused by it. The plaintiff's electric cables under the same streets were damaged by the bursting of the defendant's mains without negligence on the part of the defendant. *Held*, that the defendant is liable for the damage. *Charing Cross, etc. Electricity Supply Co.* v. *London Hydraulic Power Co.*, [1913] 3 K. B. 442.

In England, and in those American jurisdictions accepting the doctrine of *Fletcher* v. *Rylands*, a landowner is not held absolutely liable for damages resulting from non-natural and hazardous user of land in undertakings conducted under express public authority, apparently on the ground that the legislature contemplated possible damage and condoned it by anticipation. *National Telephone Co.* v. *Baker*, [1893] 2 Ch. 186; *Lake Shore & M. S. Ry. Co.* v. *Chicago, L. S. & S. B. Ry. Co.*, 48 Ind. App. 584, 92 N. E. 989. A sound basis for these cases, however, seems to be that the public interest in the undertakings makes unwise the application to them of the exceptional doctrine of *Fletcher* v. *Rylands*. Where, however, as in the principal case, the words of the statute expressly negative the company's exemption from liability for any nuisance, the courts have held the company responsible, regardless of negligence, for damages caused by the hazardous user. *Midwood & Co., Ltd.*, v. *Manchester Corporation*, [1905] 2 K. B. 597. Though it is doubtful if the word "nuisance" can be construed to cover what is not nuisance at all, it is apparent from the history of the cases that the legislature intended to hold the company to a strict liability and hence inferentially abrogated the rule that the public interest makes the doctrine of *Fletcher* v. *Rylands* inapplicable. The fact that the parties in the principal case are not adjoining landowners but co-users of the highway affords no basis for distinguishing this case from *Fletcher* v. *Rylands*, since both the plaintiff and the defendant have undoubted rights in the land, and the hazard-

ous user by one has caused interference with the rights of the other. See *National Telephone Co.* v. *Baker*, [1893] 2 Ch. 186, 199.

TORTS — UNUSUAL CASES OF TORT LIABILITY — PRICE CUTTING AS A TORT. — A department store owner, for the purpose of injuring a selling agent in his business, advertised with fraudulent representations sewing machines at half price. *Held*, that the defendant's conduct is actionable as a malicious injury to the plaintiff's business under the guise of simulated competition. *Boggs* v. *Duncan-Schell Furniture Co.*, 143 N. W. 482 (Ia.).

For a discussion of price cutting as a tort, see NOTES, p. 374.

TRADE MARKS AND TRADE NAMES — PROTECTION APART FROM STATUTE — TERRITORIAL LIMITATION ON TECHNICAL TRADE MARK. — The plaintiff had established a market for flour in certain states under a technical trade mark. The defendant, afterward, in good faith, used the same trade mark in territory in which the plaintiff's flour is yet unknown. The plaintiff seeks to enjoin the further use of the mark in this territory. *Held*, that an injunction will not be granted. *Hanover Star Milling Co.* v. *Allen & Wheeler Co.*, 208 Fed. 513 (U. S. C. C. A., 7th Cir.).

A technical trade mark, as distinguished from a trade name, is purely arbitrary with reference to the article to which attached, and not simply indicative of its class, description, or place of manufacture, or of the manufacturer's or vendor's name. See HOPKINS ON TRADE MARKS, § 3. Certain cases not too well considered appear to hold that a right to such a mark acquired in one locality may be enforced in any other locality, regardless of the extent of actual good will attaching to the mark. *Derringer* v. *Plate*, 29 Cal. 292; *Kidd* v. *Johnson*, 100 U. S. 617; *Hygeia Distilled Water Co.* v. *Consolidated Ice Co.*, 144 Fed. 139. It is submitted, however, that the principal case is sound in reasoning that protection is extended a trade mark in order to guard the good will with which the mark is identified, rather than the mark alone; and that where a plaintiff's wares are unknown he has nothing to protect. Furthermore, this is the doctrine applied to trade names, and there seems no reason for distinguishing trade marks from trade names in this connection. See *Briggs* v. *National Wafer Co.*, 102 N. E. 87 (Mass.), discussed in 27 HARV. L. REV. 190.

TRUSTS — NATURE OF THE TRUST RELATION — DEPOSIT IN BANK FOR SPECIFIC PURPOSE. — The plaintiff administrator deposited funds in a bank, and took the following receipt: "To be held until vouchers are received from heirs. Then same to be forwarded by bank draft." The bank having failed, he now sues for the money as a trust fund. *Held*, that he may recover. *Carlson* v. *Kies*, 134 Pac. 808 (Supreme Wash.).

The principal case illustrates the close questions of fact that arise in distinguishing between a general and a special deposit. The decision seems hard to support, inasmuch as banking convenience requires every deposit to be considered general unless the parties expressly contracted that the money be held separate as a trust *res*. *Nichols* v. *State*, 46 Neb. 715, 65 N. W. 774. *In re Mutual Building Soc.*, Fed. Cas. No. 9,976. Nothing appears in the receipt to clearly negative the bank's presumptive right to mingle. On the contrary, it is a necessary inference from the expressed intention that the money should ultimately be forwarded by bank draft. See 12 HARV. L. REV. 221; 27 HARV. L. REV. 191.

WITNESSES — PRIVILEGED COMMUNICATIONS — HUSBAND AND WIFE: LETTER RECEIVED AFTER HUSBAND'S DEATH NOT PRIVILEGED UNDER STATUTE PROTECTING COMMUNICATIONS DURING MARRIAGE. — In a suit on an insurance